APPENDIX A-- OPI NION AND JUDGEMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTH WESTERN DISTRICT OF OHIO WESTERN DIVISION

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

Filed October 24, 2001

No. 3:01CV7452

Cindy L. Naething

Plaintiff

-v-

Lee Covington, et al,

Defendants

This is a pro se 1983 and 1985 case arising from plaintiff's contention that she is the beneficiary of two life insurance policies issued by the defendant American General Life and Accident Insurance Company. She claims, inter alia, that the state defendant, the Ohio Department of Insurance (sued through its Director; Lee Covington), conspired with American General, and has deprived her of unspecified civil rights.

Pending are motions to dismiss filed by both defendants. For the following reasons the motions shall be granted.

OPINION OF THE COURT

Finally, and in any event, the defendant insurance company is not a state actor. Thus cannot be sued under 1983.

The state defendant seeks dismissal under the doctrine of sovereign immunity. That argument need not be addressed because defendant's alternative argument that the plaintiff's complaint fails for want and specificity to state a claim – is well taken. Her allegations of misconduct and conspiracy are entirely conclusory, and thus is insufficient. See, e.g., Gruiterrez v. Lynch, 826 F. 2d 1534, 1538 (6th Cir. 1987) ("conspiracy claims must be plead with some degree of specificity and . . . vague and conclusory allegations unsupported by material facts will not be sufficient to state a claim under 1983"). Moreover, even read more broadly in her favor, the plaintiff's allegations fail to show that any right protected under the Constitution and laws of the United States have been violated.

In light of the foregoing, it is ORDERED THAT the motions to dismiss be, and the same hereby are granted; plaintiff's motion to compel dismissed as moot.

So ordered

S/James G. Carr
James G. Carr
United States District Judge

Appendix B

APPENDIX B—OPINION AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTH WESTERN DISTRICT OF OHIO WESTERN DIVISION

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

No. 3:01CV 7452

Cindy L. Naething

Plaintiff

-v- ORDER

Lee Covington, et al,

Defendants

This Court filed a judgment entry closing this case on October 24, 2001. It appearing that the defendant American General Life & Accident Insurance filed a motion to dismiss on October 19, 2001, to which plaintiff had not had the opportunity to file a response.

It is hereby ordered that a judgment entry filed on October 24, 2001 is vacated only as to the closing of the case. Further ordered that the plaintiff shall file her response to the defend. motion to dismiss by November 19, 2001; defendant's reply due December3, 2001.

S/ James G. Carr

So ordered. United States District Judge

Appendix C

APPENDIX C-OPINION AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTH WESTERN DISTRICT OF OHIO WESTERN DIVISION

No. 3:01CV 7452

Cindy L. Naething

Plaintiff

-v- ORDER

American General Life Ins. Co., et al.,

Defendants

This suit by claimant to life insurance proceeds on two policies issued by the defendant American General Life Insurance Company. Pending is the defendant's motion to dismiss. For the reasons as follow, the motion shall be granted.

The plaintiff sued to recover the same death benefits in 1995 in the Court of Common Pleas of Richland County, Ohio. The court dismissed her suit, finding that the plaintiff had no interest in, and was entitled to no benefits under the policies. plaintiff's appeal of the judgment was dismissed as untimely.

Appendix C

Plaintiff now sues under 42 U.S.C. 1983, 1985. Her suit must be dismissed for the various reasons urged by the defendant.

First, the defendant is not a state actor, and thus does not come within the term, "under color of law," as used in 1983. Insurance companies are not state agencies of the state, and the mere fact that insurance companies are extensively regulated does not cause them to act under color of state law. See, e.g., Jackson v. Metropolitan Edison Co., 419 U.S. 345, 350 (1974).

Second, plaintiff has failed to allege material facts sufficient to support her claim that the defendant engaged in a conspiracy subject to 1985(3). See, e.g., Barkley v. City of Jackson, 705 F. Supp. 390, 392 (W.D. Tenn. 1988) (material facts must be plead with specificity to sustain cause of action under 1985(3). Nor has she claimed that the defendant acted on the basis of racial animus, or that it deprived her of any of her civil rights. See Lewis v. Hager, 956 F. 2d 1164 (6th Cir. 1992).

Finally, plaintiff's claims are barred by the doctrine of collateral estoppel. Her suit in Richland County, Ohio, of Common Pleas put into issue her entitlement to the benefits that she seeks in this suit. She could of brought the instant federal claims in that case. The judgment adverse to her in that litigation bars any subsequent effort to recover on the basis of her contentions that the defendant acted improperly in rejecting her claims and paying some else the proceeds of the policies to someone else.

Appendix C

In light of the foregoing, it is necessary to address defendant's contention that plaintiff's suit is outside the statute of limitations.

It is, therefore,

ORDERED THAT the defendant's motion to dismiss be, and the same hereby is granted.

So ordered

S/ James G. Carr
James G. Carr
United States District Judge

Appendix D

APPENDIX D-OPINION AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTH WESTERN DISTRICT OF OHIO WESTERN DIVISION

No. 3:01CV 7452

Cindy L. Naething

Plaintiff

v. ORDER

American General Life Ins. Co. Et al.,

Defendants

Appendix D

This is a suit by claimant to life insurance proceeds on two policies issued by defendant American General Life Insurance Company. Pending is plaintiff's motion to recuse. For the following reasons that follow, the motion shall be denied.

Plaintiff brought suit against two defendants. The individual defendants. The individual motion defendants motion to dismiss was granted. The entry directed, erroneously, that the case be closed. It since has been reopened, and the remaining defendant has filed a motion to dismiss on its behalf.

Plaintiff contends that the initial error in dismissing both defendants on the motion of only one of them has irredeemably tainted my further consideration of the case.

That is simply not so. Judicial error at one stage of a proceeding does not entitle a litigant a new judge. The standard for recusal under 28 U.S.C. 455(a) is "whether a reasonable person, knowing all the surrounding circumstances, would consider the judge impartial." United States v. Norton. 700 F. 2d 1072 1076 (6th Cir 1983).

A reasonable person, aware that a judge through oversight commited an error, which he later corrected, thereby allowing a litigant to proceed with her suit, would not conclude that a judge was biased against litigant, or had pre-determined the outcome of her case. There is no merit to plaintiff's motion to recuse. It is accordingly, ORDERED THAT plaintiff's motion to

recuse be, and same is hereby denied.

So ordered. S/ James G. Carr

Appendix E

APPENDIX E-OPINION AND JUDGEMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTH WESTERN DISTRICT OF OHIO WESTERN DIVISION

No. 3:01CV7452

Cindy L. Naething

Plaintiff

v. JUDGMENT ENTRY

American General Life Ins. Co., et al.,

Defendants

For the reasons stated in the Order filed December 14, 2001, it is hereby ordered that the defendant's motion to dismiss be, and same hereby is granted. Case closed.

So ordered.

S/ James G. Carr
James G. Carr
United States District Judge

Appendix F

APPENDIX F—OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 01-4189

Cindy L. Naething

Plaintiff-Appellant,

ORDER
Filed June 25, 2002

-v-

Lee Covington, Director; American General Life And Accident Insurance Company,

Defendants-Appelles

Before: BOGGS, CLAY, and GILMAN, Circuit Judges.

This matter is before the court upon consideration of a motion of a defendant to dismiss the appeal. The appellant responded and replies were filed.

After careful consideration of the matter, it is ordered that a motion to dismiss is referred to a hearing panel of the court.

ENTERED BY ORDER OF THE COURT

S/ Leonard Green
Clerk

Appendix G

APPENDIX G-OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 01-4189

Cindy L. Naething

Plaintiff-Appellant

-v-

ORDER
Filed August 30, 2002

Lee Covington, Director;
American General Life &
Acc. Insurance Company

Defendants-Appelles

Upon consideration of appellant's motion to deny defendant/appellee Ohio Department of Insurance's brief.

It is hereby ORDERED that the motion be and hereby Is DENIED.

ENTERED PURSUANT TO RULE 45 (a),
RULES OF THE SIXTH CIRCUIT.
Leonard Green, Clerk

S/ Leonard Green

Appendix H

APPENDIX H-OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 01-4189

Cindy L. Naething

Scott Myers

F. James Foley

ORDER

June 20, 2003

RE: 01-4189 Naething vs. Covington

Dear Madam/Sirs:

This will advise you that the case noted above is scheduled for submission to the court on briefs of the parties and the record on July 29, 2003. You will be promptly advised of the court's decision, and any other order or direction it may issue.

Very truly yours,
S/ Marjorie Eliasen
Marjorie Eliasen
Calendar Coordinator

Enclosure
tmb

Appendix I

APPENDIX-OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 01-4189

Cindy L. Naething

Plaintiff/Appellant

ORDER
Filed July 29, 2003

-v-

Lee Covington, Director; American General Life And Accident Insurance Company

Defendants-Appellees

Under consideration of appellee's motion to dismiss; and appellant's motion to clarify, it is hereby ORDERED a ruling on these motions will be deferred until the hearing panel confers on July 29, 2003.

ENTERED BY ORDER OF THE COURT

S/ Leonard Green
Leonard Green, Clerk

APPENDIX J—OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Cindy L. Naething

Plaintiff – Appellant

-v-

Lee Covington, Director, Ohio Department of Insurance
American General Life
And Accident Ins.

Defendants – Appellees.

ORDER
Filed Aug 20, 2003

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR NORTHERN DISTRICT OF OHIO

Before: GILMAN and GIBBONS, Circuit Judges; and JORDAN, District Judge.

PER CURIAM. Cindy Naething filed an action under 42 U.S.C. 1983 against American General Life and Accident Insurance Company ("AGLA") and Director Lee Covington ("Director Covington") of the Ohio Department of Insurance claiming entitlement to proceeds from life insurance policies issued to Martin Hampton and seeking production of the policies and related cancel checks. Prior to filing her complaint in the district court, plaintiff filed an action in Ohio state court seeking discovery and claiming benefits under the policies. The Ohio court ruled in 1995 that plaintiff had received all the discovery to which

Appendix J

*The Honorable Leon Jordan, United States District Judge for the Eastern District of Tennessee, sitting by designation.

Stating she was entitled and that she was not entitled to benefits under the insurance policies. Plaintiff filed her complaint in district court on Aug 28, 2001. Defendants each filed a motion to dismiss. The district court granted both motions. It held with regard to AGLA that the complaint was barred by the applicable statute of limitations and that AGLA is not a state actor and therefore cannot be sued under 1983. As to Director Covington, the district court held that the complaint failed for want of specificity to state a claim because plaintiff's allegations of misconduct and conspiracy were conclusory and thus insufficient.

The court further held that the complaint failed to sufficiently allege that a right protected under the Constitution of laws of the United States had been violated, a requirement for a 1983 action.

For the reasons articulated by the district court, we agree that the claims against AGLA are barred by the statute of limitations and that AGLA is not a state actor, a claim under 1983 can not stand. We further agree with the district court that the claims against Director Covington fail for want of specificity and that the complaint fails to allege sufficiently that a right has been violated. Having studied the record on appeal and the briefs of the parties, we are not persuaded that the district court fully articulated its reasons for dismissal, the issuance of a detailed opinion by this court would be duplicative and serve no purpose. Accordingly, we affirm the judgment of the district court upon the reasoning set out

Appendix J

By the court in its opinion and order entered October 24, 2001.

Appendix K

APPENDIX K-OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Cindy L. Naething

Plaintiff-Appellant

ORDER
Filed September 19, 2001

-v-

Lee Covington, Director; American General Life And Accident Insurance Company

Defendants-Appellees

Upon consideration of appellant's motion to inform the United States Court of Appeals for the Six Circuit of possible Appeal construed as a petition for rehearing,

It is ORDERED that the petition for rehearing be, and it Hereby is, DENIED.

ENTERED BY ORDER OF THE COURT

S/ Leonard Green, Clerk

Appendix L

APPENDIX L-OPINION AND MANDATE OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 01-4189

Cindy L. Naething

Plaintiff-Appellant Filed September 19, 2003

-v-

Lee Covington, Director; American General Life And Accident Insurance Company

Defendants-Appellees

MANDATE

Pursuant to the court's disposition that was filed 8/20/03 the mandate for this case issues today.

A True Copy.

COST: NO COSTS TAXED Attest:

Filing fee.....$ S/ Robin Duncan
Printing.....$ Deputy Clerk